



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 20, 1998

Mr. John Steiner
Division Chief
City of Austin
Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR98-1011

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114267.

The Austin Police Department (the "department"), which your office represents, received a request for photographs and a video tape taken by department police officers during the execution of a search warrant at the requestor's residence. You claim that the requested information is excepted from required public disclosure by sections 552.103, 552.108, and 552.119 of the Government Code. We have considered the exceptions you claim and have reviewed the information at issue.

As a preface to our discussion, we note that this office has previously addressed a request for this same information from the requestor. In Open Records Letter No. 97-0554 (1997), our office specifically addressed the release of photographs and video tape taken by department police officers during the execution of the search warrant. However, to support the claimed section 552.108 exception, our previous ruling was based on *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note that the *Holmes* court construed former section 552.108 which is no longer in effect. The Seventy-fifth Legislature made significant, substantive changes to section 552.108. Thus, the former section 552.108 and the *Holmes* interpretation of the former section 552.108, are superseded by the amended section discussed infra.

Section 552.108 of the Government Code, the "law enforcement" exception, provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

* * * *

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.


Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that "[t]he video tape was taken as part of service of a search and arrest warrant . . . and it is reasonably anticipated that criminal charges will be filed to a narcotic-related case." From your brief, we understand that the submitted records relate to "an ongoing criminal investigation." As the requested videotape and photographs relate to a pending criminal investigation or prosecution, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. Although, the requested information may be withheld pursuant to section 552.108(a)(1), we note that the department has discretion to release all or part of the information at issue that is not otherwise made confidential by law.¹ Gov't Code § 552.007.

¹However, we note that some of the requested information may be confidential. *See* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). Section 552.119 of the Government Code excepts from public disclosure a photograph that depicts a peace officer as defined by article 2.12, Code of Criminal Procedure, unless certain conditions for disclosure exist, or the peace officer gives written consent to the disclosure.

As we resolve this matter under 552.108 of the Government Code, we need not specifically address the applicability of the other claimed exceptions at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 114267

Enclosures: Submitted documents

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(w/o enclosures)